

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re: Dale C. Flanders *et al.* Confirmation No: 4350
Application No: 09/645,827 Group: 1793
Filed: August 25, 2000 Examiner: Aboagye,
Michael
For: Optical System Production
System
Customer No.: 25263

Attorney Docket No.	1000.0006
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REPLY BRIEF UNDER RULE 41.41(a)(1)

VIA FACSIMILE: **571-273-8300**
Mail Stop Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This is the Applicants'-Appellants' Reply to the Examiner's Answer of
December 22, 2009.

Relative to Claims 1, 3-8, 17, 19 and 20

As outlined in the Applicants' Brief, the claims require a pick-and-place machine
that solder bonds mounting structures to optical benches.

The Answer does not assert that either of the references shows or suggests the
claimed solder bonding.

Instead, the Answer argues that "the apparatus of Wolfgang would be capable of
(laser) soldering the mounting structures to the benches." See page 4 of the Answer, for
example.

In effect, the Answer is substituting the statutory criteria for patentability, *i.e.* obviousness, for a new criteria 'would be capable of meeting the claimed features.' See also page 10 of the Answer:

supporting evidence). Regardless, it is the examiner's position that the apparatus of Wolfgang would be capable of (laser) soldering to bond the mounting structures to the benches, which is not excluded from the claims. More importantly, while features of an

It does not appear that the Answer ever asserts that the claimed solder bonding would have been obvious from the applied references.

The touchstone of patentability advanced by the Answer: "would be capable of" would defeat entire classes of patentable subject matter. By analogy, no computer implemented invention would be patentable since the basic computer "would be capable of" implementing the invention when properly programmed. Here, the Answer argues, in effect, that since the Wolfgang system could be modified to solder bond, *ergo* a system using solder bonding is unpatentable.

In fact, the patentability is proscribed by what is "obvious". There is no evidence or even an assertion that the claimed invention is obvious in view of the applied references.

On one final point, the Answer asserts "laser welding" is synonymous with "laser soldering". The assertion is absurd. "Welding" and "soldering" are different joining techniques that date back millennia. They are not the same. Certainly the Rhee patent does not claim they are synonymous, but instead refers to them as discrete and different joining techniques.

The rejections should be withdrawn.

February 22, 2010

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Should any questions arise, please contact the undersigned.

Respectfully submitted,

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